



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

400 Seventh Street, S.W.
Washington, D.C. 20590

NOV 30 2005

Mr. Alan I. Roberts
President
Dangerous Goods Advisory Council
1100 H Street NW, Suite 740
Washington, DC 20005-5484

Ref. No.: 05-0265

Dear Mr. Roberts:

This is in response to your October 14, 2005 letter regarding closure notification requirements in § 178.2(c)(1) of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically you ask this office to reconsider the interpretation in our March 4, 2005 letter to Bayer MaterialScience LLC (Bayer) regarding packaging closure notification (Ref. No.: 05-0015).

You are correct in your understanding that a "package" and a "packaging" are defined differently in § 171.8. A "package" is defined as a packaging plus its contents. A "packaging" means a receptacle and any other components or materials necessary for the receptacle to perform its containment. A "packaging" may contain a hazardous material, but the term does not include the hazardous material contents.

You are also correct that, when a completed package is offered to a carrier, the offeror does not necessarily need to comply with § 178.2(c)(1). However, in the scenario provided by Ms. Rebecca Cernick in her letter, Bayer was offering a package for transportation and also instructing the consignee to return the Intermediate Bulk Container to Bayer. Therefore, Bayer was, in addition to offering a package for transportation, transferring a packaging to the consignee, and was subject to § 178.2(c)(1).

I hope this information is helpful. If you have further questions, please do not hesitate to contact this office.

Sincerely,

Hattie L. Mitchell
Chief, Regulatory Review and Reinvention
Office of Hazardous Materials Standards



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Dangerous Goods Advisory Council

Suite 740 ♦ 1100 H Street NW ♦ Washington DC 20005 ♦ 202/289-4550 ♦ Fax 202/289-4074 ♦ www.dgac.org

Pollack

§178.2.

Packaging

05-02-05

October 14, 2005

Dr. Robert A. McGuire
Associate Administrator for Hazardous Materials Safety
Pipeline and Hazardous Materials Safety Administration
U. S. Department of Transportation
Washington, DC 20590

Dear Dr. McGuire:

I request that a letter of interpretation addressing the applicability of 49 CFR 178.2(c) be reissued to correctly state the applicability of the requirement to provide notification of information necessary to complete a packaging.

In a letter dated March 4, 2005, addressed to Ms. Rebecca Cernick of Bayer Materials Science LLC, Ms. Mitchell stated Bayer Materials Science LLC, an offeror of a hazardous material for transportation must provide its customers with a written notification conveying the information described in §178.2(c)(1).

The purpose of 49CFR, Part 178, is described in §178.1 making reference to *packaging*. The notification requirement in §178.2(c)(1) applies to manufacturers and subsequent distributors of packagings. Based on the definition of *packaging* provided in § 171.8, a packaging does not contain a hazardous material. Once a packaging contains a hazardous material, it becomes a *package* as defined in §171.8, assuming compliance with the packaging regulations. Therefore, an offeror of a hazardous material in a package is not a manufacturer or distributor of a packaging and is not required to provide customers with the information specified in §178.2(c)(1).

A number of our members are concerned about the consequences of the interpretation cited above. Therefore, we request the error be corrected and that we be provided a copy thereof. We appreciate in advance your action on this matter.

Sincerely,

Alan I. Roberts
President